



## General Assembly

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### **Special Committee on the Situation with regard to the Implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples**

### **Conceptual framework for the review of the constitutional and juridical status of the Non-Self-Governing Territories and on progress in the implementation of the 1960 Declaration on the Granting of Independence to Colonial Countries and Peoples**

**Working paper submitted by Chile**

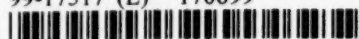
#### **Charter of the United Nations, resolutions and legal opinions**

1. The relevant role played by the United Nations in decolonization was initiated in its Charter, in Chapter XI, entitled "Declaration regarding Non-Self-Governing Territories", which gave rise to the establishment in later years of the Special Committee on the Situation with regard to the Implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples, as well as Chapters XII and XIII on the International Trusteeship System.

2. Article 73 of Chapter XI stipulates that Member States which have or assume responsibilities for the administration of Territories whose peoples have not yet attained a full measure of self-government should, *inter alia*, develop self-government, take due account of the political aspirations of the peoples and assist them in the progressive development of their free political institutions; and transmit regularly to the Secretary-General for information purposes, information related to economic, social and educational conditions in the Territories.

3. Before the establishment of the Special Committee, the General Assembly had to deal directly — through its Fourth Committee — with the information under Article 73 of the Charter on Non-Self-Governing Territories that were not placed under the International Trusteeship System. It may be recalled that, by resolution 742 (VIII) of 27 November 1953, the General Assembly approved a list of factors indicative of the attainment of independence or of other separate systems of self-government and recommended that the list be used by the General Assembly and the administering Powers as a guide in determining whether any Territory, due to changes in its constitutional status, might no longer be within the scope of Chapter XI of the Charter. Nevertheless, the General Assembly expressed also in the same resolution that each concrete case should be considered and decided upon in the light of the particular circumstances of that case, and that those factors should not be interpreted as a hindrance to the attainment of a full measure of self-government.

4. The General Assembly has pursued the realization of the principle of self-determination mainly in the context of the process of decolonization and, since 1961, has expanded and elaborated for the Special Committee the framework



provided in the Charter.<sup>1</sup> The main task of the Special Committee, as established by the General Assembly in its resolution 1654 (XVI) of 27 November 1961, has been to examine the application of the Declaration on the Granting of Independence to Colonial Countries and Peoples contained in General Assembly resolution 1514 (XV) of 14 December 1960, and to make suggestions and recommendations on the progress and extent of the implementation of the Declaration, with the aim of accelerating the process of decolonization.

5. In its resolution 1514 (XV), the General Assembly declared that all peoples had the right to self-determination, even in the absence of adequate preparations on political, social and educational matters, and that steps should be taken in the Non-Self-Governing Territories to transfer all powers to the peoples of those Territories to enable them to enjoy complete independence and freedom.

6. The goal of full independence expressed in resolution 1514 (XV) was complemented by the General Assembly in its resolution 1541 (XV) of 15 December 1960, in which Principle VI states that a Non-Self-Governing Territory can be said to have reached a full measure of self-government by:

- (a) Emergence as a sovereign independent State;
- (b) Free association with an independent State; or
- (c) Integration with an independent State.

7. As can be seen, it is possible to state that the Special Committee's main goal is to promote and certify self-determination of the people of the Non-Self-Governing Territories — and there is clarity on the type of status that the exercise of self-government may offer to the peoples of the Non-Self-Governing Territories. It should be noted that the type of status is even broader if one takes into account General Assembly resolution 2625 (XXV) of 24 October 1970, which states that “the establishment of a sovereign and independent State, the free association or integration with an independent State or the emergence into any other political status freely determined by a people constitute modes of implementing the right of self-determination by that people”.

8. A legal regulation of the self-determination of Non-Self-Governing Territories was stated by the International Court of Justice in its Advisory Opinion on Western Sahara of 16 October 1975. The Court expressed that:

“The above provisions [referring to General Assembly resolution 1514 (XV)], in particular paragraph 2, thus confirm and emphasize that the application of the right of self-determination requires

a free and genuine expression of the will of the peoples concerned”

and that

“the validity of the principle of self-determination, defined as the need to pay regard to the freely expressed will of the peoples, is not affected by the fact that in certain cases the General Assembly has dispensed with the requirement of consulting the inhabitants of a given Territory. Those instances were based either on the consideration that a certain population did not constitute a ‘people’ entitled to self-determination or on the conviction that a consultation was totally unnecessary, in view of special circumstances.”<sup>2</sup>

9. The General Assembly, in its resolution 43/47 of 22 November 1988, declared the period 1990–2000 the International Decade for the Eradication of Colonialism. In its resolution 46/181 of 19 December 1991, the General Assembly stated that, *inter alia*, the ultimate goal of the Decade was the free exercise of the right to self-determination by the peoples of each and every remaining Non-Self-Governing Territory. It adopted the proposals contained in the annex to the report of the Secretary-General, dated 13 December 1991, to serve as a plan of action for the International Decade (A/46/634/Rev.1). Within those proposals, mention should be made of the following:

(a) The ultimate goal of the International Decade should be the full implementation of the Declaration, in accordance with all relevant resolutions and decisions of the General Assembly and with the principles contained in the Declaration;

(b) The international community and the United Nations system as a whole should continue to support the holding of consultations, as well as negotiations that are under way, among Member States concerned with a view to resolving certain colonial situations clearly identified in resolutions and decisions of the General Assembly;

(c) The United Nations, in cooperation with the administering Powers, should ensure that the peoples of the Non-Self-Governing Territories are kept fully informed of the political status options available to them;

(d) The appropriate United Nations organs, in consultations with the administering Powers, should undertake comprehensive reviews of the situation in each of the Non-Self-Governing Territories in order to arrange for the holding of self-determination referendums as soon as possible, but not later than 31 December 1999.

10. Finally, it must be noted that in a legal opinion, the United Nations Legal Counsel stated that a review of the relevant provisions of the resolution "reveals that the General Assembly did not set out specific modalities or mechanisms which would apply on a general basis to all Non-Self-Governing Territories for the exercise of their right of self-determination". Furthermore, "the practice reveals that the General Assembly has acted on a case-by-case basis in determining whether the modalities for the attainment of self-government by the peoples concerned satisfied the requirements of the Charter and of the relevant Assembly resolutions".<sup>3</sup>

### Application of the Declaration

11. The list of Non-Self-Governing Territories in accordance with Chapter XI of the Charter and the relevant General Assembly resolutions as at 31 December 1962 included 64 Territories. The General Assembly incorporated in the list of Non-Self-Governing Territories of 1962 three other Territories.<sup>4</sup>

12. Since 1962, the constitutional status of those Territories has evolved as follows:<sup>5</sup>

42 independent States;

5 Territories followed integration with an independent State;

2 Territories were excluded from the list;

2 Territories decided on the status of free association with an independent State;

17 Territories remain on the list.<sup>6</sup>

13. It is interesting to recall the process followed by the Territories of the Cook Islands and Niue, whose peoples decided on the option of free association, and the case of the Cocos (Keeling) Islands, a Territory which opted for integration with a sovereign State.

14. In 1965, the Special Committee, after examining the report of the United Nations Representative for the Supervision of the Elections in the Cook Islands,<sup>7</sup> informed the General Assembly of the situation in the Territory. The General Assembly then adopted resolution 2064 (XX) of 16 December 1965, in which, *inter alia*, it noted that the Constitution of the Cook Islands had come into force, and that "the people of the Cook Islands have had control of their internal affairs and of their future"; and it considered "that since the Cook Islands have attained full internal self-government, the transmission of information ... is no longer necessary". Noting that, under the Constitution "the people

of the Cook Islands have reserved their right to move to a status of complete independence", the General Assembly reaffirmed the responsibility of the United Nations, under resolution 1514 (XV), "to assist the people of the Cook Islands in the eventual achievement of full independence, if they so wish, at a future date".

15. A similar situation occurred in the case of Niue, where a United Nations special mission observed the exercise of self-determination in 1974. The General Assembly subsequently adopted resolution 3285 (XXIX) of 13 December 1974, in which it "takes note that the people of Niue voted, by a substantive majority, for self-government in free association with New Zealand" and that the people of Niue having exercised their right to self-determination, "considers that ... the transmission of information in respect of Niue under Article 73 *e* ... is no longer necessary".

16. In the case of the Cocos (Keeling) Islands, the people voted by a substantial majority for integration with Australia, and this was acknowledged by the Special Committee and the General Assembly, which decided, in resolution 39/30 of 5 December 1984, to end the request for transmission of information.

### Guidelines for action based on General Assembly resolutions and past practice

17. Since its inception, the Special Committee has been deeply involved in the United Nations process of decolonization. The last Territory to be declared independent was Brunei, in 1984, and it was consequently withdrawn from the list of the Special Committee. It may be noted that since the initiation in 1990 of the International Decade, no Non-Self-Governing Territory on the agenda of the Special Committee has exercised its right of self-determination.<sup>8</sup>

18. This means that 17 Non-Self-Governing Territories remain on the list of the Special Committee since 1984. These are: East Timor, Falkland Islands (Malvinas), Gibraltar, New Caledonia, Western Sahara, American Samoa, Anguilla, Bermuda, British Virgin Islands, Cayman Islands, Guam, Montserrat, Pitcairn, St. Helena, Tokelau, Turks and Caicos Islands and United States Virgin Islands (the last 12 Territories are also known as small Territories).

19. The reason why there has been no action with regard to the status of the Non-Self-Governing Territories since the beginning of the International Decade may be found in different causes, but it is important to underline two facts: with few exceptions there has been a lack of cooperation from the administering Powers, on the one hand, and the

Special Committee has perhaps not focused its work towards a more practical approach to the situation in the Territories.

20. Based on the pertinent General Assembly resolutions and applicable legal opinions, as well as on the past practice of the General Assembly, some useful and clear guidelines may help the Special Committee to discharge its mandate with regard to the remaining Non-Self-Governing Territories:

(a) The Special Committee should encourage and support consultation between interested parties, and/or the action undertaken by the Secretary-General, in relation to some of the Territories that remain in its agenda;<sup>9</sup>

(b) Inadequacy of political, economic, social or educational preparedness of the people of a particular Non-Self-Governing Territory should not serve as a pretext for delaying the exercise of self-determination;

(c) The constitutional status that each Non-Self-Governing Territory would aspire to achieve should be the result of the exercise of the right to self-determination by the people of the respective Territory. Within the modalities to exercise the right of self-determination, the most appropriate is the organization of a referendum on self-determination in the respective Territory;

(d) Nevertheless, following the practice of the United Nations, it is possible to conduct the process on a case-by-case basis to determine modalities to achieve self-government: an act of referendum; a negotiation or agreement between the main organs of the Territory and the administering Power; a decision of the executive and/or legislative body of the Territory; or any other acceptable modality to attain the objective;<sup>10</sup>

(e) Bearing in mind the application of the relevant resolutions, it is apparent that at least in the case of the achievement of political independence by a Non-Self-Governing Territory, it was not formally required that the relevant people should freely express their will. This requirement is instead set out in resolution 1541 (XV) with regard to peoples who choose association or integration with an independent State;<sup>11</sup>

(f) Once the people of a particular Territory have exercised their right to self-determination, the right expires. This is particularly true with the options for independence or for integration. When a people decide on free association, the right to self-determination may be kept, in some cases, as a right to be exercised in the future.<sup>12</sup>

## Conclusions and recommendations

21. Bearing in mind the above-mentioned guidelines and considering that the International Decade will be ending shortly (December 2000), to comply with its mandate, the Special Committee should work closely with the administering Powers in the period left in order to proceed to the examination and, when appropriate, to decide on the status of those Territories that remain on its agenda, in particular the 12 small Non-Self-Governing Territories (see para. 18).

22. It is necessary to work on a case-by-case basis, as has been the practice of the Special Committee and the General Assembly in determining the modalities for the attainment of the right to self-determination of each Non-Self-Governing Territory.

23. The Special Committee and the respective administering Power should decide on the procedure to follow with respect to the process and certification of self-determination of each of the Non-Self-Governing Territories. In this context, it must be determined if it is convenient to send a visiting mission; to send an observer mission to a referendum or electoral act; or to decide on any other formal action that the United Nations could undertake.

24. It should be noted that in practical terms the main obligation of the administering Powers to the United Nations and to the Special Committee, in particular, is the transmission of information called for under Article 73 *e* of the Charter. In principle, when a Territory has achieved independence, integration or free association with a sovereign State, the Special Committee has recommended to the General Assembly that information on that Territory should cease to be transmitted by the administering Power, and to that end, that Territory should be removed from the list.

## Notes

<sup>1</sup> The other body related to decolonization under Chapter XI was the United Nations Council for Namibia, created in 1967 by the General Assembly as the Council for South West Africa.

<sup>2</sup> *ICJ, Reports 1975*, 52-33.

<sup>3</sup> Letter dated 11 February 1997 from Under-Secretary-General for Legal Affairs to the Chairman of the Special Committee.

<sup>4</sup> French Somaliland (1965), the Comoro Archipelago (1972) and New Caledonia (1986).

<sup>5</sup> With the exception of some cases, each Territory followed an individual political process. The exceptions were Fernando

Poo and Rio Muni, which united to form Equatorial Guinea; the Gilbert and Ellice Islands, which formed two different independent States, Kiribati and Tuvalu, respectively; and St. Kitts-Nevis-Anguilla, which divided into the new independent State of Saint Kitts and Nevis and the current Non-Self-Governing Territory of Anguilla. Other cases that may be mentioned are of those independent States created by the unification of a former Non-Self-Governing Territory included in the list with a Territory under the Trusteeship System. These are the United Republic of Tanzania, formed by Zanzibar and Tanganyika; and Papua New Guinea, formed by Papua and the Trust Territory of New Guinea.

<sup>6</sup> The current constitutional status of the Territories included in the 1962 list is given in the annex to the present report.

<sup>7</sup> *Official Records of the General Assembly, Twentieth Session, Annexes*, agenda items 23 and 24, document A/5962.

<sup>8</sup> There was a referendum on independence in Bermuda in 1995. Some 58.8 per cent of the registered voters participated in it. 25.6 per cent voted in favour of independence; 73.7 per cent voted against; and 0.7 per cent abstained.

<sup>9</sup> These Territories are East Timor, Western Sahara, the Falkland Islands (Malvinas), New Caledonia and Gibraltar.

<sup>10</sup> See "United Nations Participation in Popular Consultations and Elections", in *Decolonization*, No. 19, December 1983.

<sup>11</sup> Since 1962, in few cases of Territories achieving independence have there been organized referendums on self-determination. Mention should be made to Equatorial Guinea in 1968; Papua in 1972; the Ellice Island in 1974, where the voters decided to become a separate territory under the name of Tuvalu.

<sup>12</sup> The Cook Islands offers an example of this situation (see para. 15 above).

## Annex

### Constitutional evolution of Non-Self-Governing Territories included in the Special Committee's list of 1962

#### A. Independent States that emerged from the Special Committee's list of Non-Self-Governing Territories

- 1962 Jamaica; Trinidad and Tobago; Uganda
- 1963 Kenya; Zanzibar (forming the United Republic of Tanzania in 1964 with Tanganyika)
- 1964 Malta; Malawi (Nyasaland under colonial rule); Zambia (Northern Rhodesia under colonial rule)
- 1965 Gambia; Singapore
- 1966 Barbados; Botswana (Bechuanaland under colonial rule); Lesotho (Basutoland under colonial rule); Guyana (British Guiana under colonial rule)
- 1967 Democratic Yemen (Aden under colonial rule. In 1990 it merged with Yemen)
- 1968 Swaziland; Mauritius; Equatorial Guinea (Fernando Poo and Rio Muni, two different Territories under colonial rule, were merged in 1963 as Equatorial Guinea)
- 1970 Fiji
- 1973 Bahamas; Guinea-Bissau (Guinea under colonial rule)
- 1974 Grenada; Kiribati (Gilbert, of the Gilbert and Ellice Islands, under colonial rule); Tuvalu (Ellice, of the Gilbert and Ellice Islands, under colonial rule)
- 1975 Angola; Cape Verde (Cape Verde Archipelago under colonial rule); Comoros (Comoro Archipelago under colonial rule); Mozambique; Sao Tome and Principe; Papua New Guinea (formed by the Territory of Papua and the Trust Territory of New Guinea)
- 1976 Seychelles
- 1977 Djibouti (French Somaliland under colonial rule)
- 1978 Dominica; Solomon Islands
- 1979 Saint Lucia; Saint Vincent and the Grenadines (St. Vincent under colonial rule)
- 1980 Zimbabwe (Southern Rhodesia under colonial rule); Vanuatu (New Hebrides under Anglo-French Condominium)
- 1981 Antigua and Barbuda (Antigua under colonial rule); Belize (British Honduras under colonial rule)

1983 Saint Kitts and Nevis (St. Kitts-Nevis-Anguilla under colonial rule. Anguilla remains a Non-Self-Governing Territory)

1984 Brunei

#### B. Territories integrated into an independent State

- 1963 West New Guinea (West Irian) became part of Indonesia as Irian Jaya
- 1963 North Borneo became part of Malaysia
- 1963 Sarawak became part of Malaysia
- 1969 Ifni became part of Morocco
- 1984 Cocos (Keeling) Islands became part of Australia

#### C. Territories that were excluded from the Special Committee's list

- 1972 Hong Kong (from 1984 was a Chinese Territory under the administration of the United Kingdom until 1997, when it was reunited with China)
- 1972 Macao (by agreement of 1987, is a Chinese Territory under the administration of Portugal, scheduled to be reunited with China on 20 December 1999)

#### D. Territories that decided on the status of free association with an independent State

- 1965 Cook Islands (a self-governing Territory in free association with New Zealand)
- 1974 Niue (a self-governing Territory in free association with New Zealand)

#### E. Remaining Non-Self-Governing Territories on the Special Committee's list

- East Timor
- Falkland Islands (Malvinas)

Gibraltar  
New Caledonia  
Western Sahara  
American Samoa  
Anguilla  
Bermuda  
British Virgin Islands  
Cayman Islands  
Guam  
Montserrat  
Pitcairn  
Saint Helena  
Tokelau  
Turks and Caicos Islands  
United States Virgin Islands

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